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Supreme Court of the United States.

OCTOBER TERM, 1941.

314-638

GEORGE H. MASON, TRUSTEE IN BANKRUPTCY OF WORCESTER MOTOR CO., INC.,
Petitioner,
v.
JOHN WYLDE ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS

AND

BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States of America:

The petition of George H. Mason, Trustee in Bankruptcy of Worcester Motor Co., Inc., and duly authorized to present such petition, respectfully shows:

Summary and Short Statement of Matter Involved.

This is an action originally brought in the Superior Court of Worcester County, Commonwealth of Massachusetts, by the petitioner, plaintiff therein and authorized to sue, to recover of the respondents, defendants therein, the value of

certain motor vehicles alleged to have been transferred by the bankrupt to the defendants within four months of the filing of the bankrupt's petition in bankruptcy at a time when the defendants or their agents had reasonable cause to believe that the Worcester Motor Co., Inc., was insolvent, and that the giving and receiving of the property aforementioned created a preference in their behalf as against the other creditors of the bankrupt wherein they received a greater percentage than the other creditors of the same class. The defendants' answer was a general denial (Record, p. 1). The case was referred to an auditor whose findings of fact were not to be final, and after the filing of his report (Record, pp. 1-6) the case was recommitted to the auditor for further findings, which appear in the auditor's supplementary report (Record, p. 11).

The auditor made specific findings of fact and found for the defendants generally. The facts are as follows:

The bankrupt until August 1, 1932, was engaged in the business of buying, selling and dealing with motor vehicles. The respondents advanced money to the bankrupt for the price of motor vehicles bought by the bankrupt and took back as security therefor so-called trust receipts covering the cars.

These "trust receipts" were found to be chattel mortgages in fact and were not recorded as required by the laws of the Commonwealth of Massachusetts (Record, p. 2).

> "Mortgages of personal property shall, within fifteen days from the date written in the mortgage, be recorded on the records of the town where the mortgagor resides when the mortgage is made, and on the records of the town where he then principally transacts his business. . . . The mortgage shall not be valid against a person other than the parties thereto until so recorded; and a record made subsequently to the time limited shall be void . . ." (G.L. (Ter. Ed.) c. 255, sec. 1).

The details and mechanics of these dealings are set forth in the record at pages 2 and 3.

Prior to July 20, 1932, the bankrupt had possession of new cars covered by such unrecorded "trust receipts" held by the respondents. On or about July 20, 1932, the respondents discovered that five of the new cars covered by "trust receipts" held by them were not on the bankrupt's premises. Payment for one of these cars was made by the bankrupt at that time and demand was made for payment for the other four cars, which were missing. However, the bankrupt stated it was low on funds, and "trust receipts" were then executed on eleven used cars as security in lieu of cash. The missing new cars at that time had been sold, or were under contract to be sold, to bona-fide purchasers, and all the claims of the respondents thereupon were surrendered (Record, pp. 3 and 4).

At the time of the execution of the trust receipts covering these eleven used cars, the respondents knew "that the bankrupt was low in funds, and needed what cash it had to meet its payroll; and had used some of the cash belonging to the defendants for that purpose" (Record, p. 5); "that the financial condition of the Worcester Motor Co., Inc. was poor, but not necessarily insolvent, though the [respondents] believed, and had a right to so believe, that further capital was going to be put into the business of the Worcester Motor Co., Inc." (Record, p. 5).

"On or about August 1, 1932, one of the directors of Worcester Motor Co., Inc. who had been expected to put more money into Worcester Motor Co., Inc., called an agent of the [respondents] saying in substance that no more money was going to be put into Worcester Motor Co., Inc. and that that corporation was going into bankruptcy; also instructing the defendant to come up and take the cars on which the eleven trust receipts were held" (Record, pp. 4-5).

Thereupon the respondents immediately repossessed the eleven used cars covered by the unrecorded trust receipts executed on July 20, 1932, and five new cars covered by unrecorded trust receipts executed prior thereto, and later sold the same (Record, p. 5).

At the time of this repossession the Worcester Motor Co., Inc., was insolvent, and the respondents knew or had reasonable grounds for believing that that was the fact (Record, p. 11).

On August 5, 1932, the Worcester Motor Co., Inc., was adjudicated bankrupt (Record, p. 2).

The plaintiff moved for judgment on the auditor's report and trial was had on the auditor's report and supplemental report as the only evidence (Record, p. 11). The defendants made requests for rulings upon which the trial judge endorsed: "I do not act upon the within requests." He "allowed" the plaintiff's motion for judgment and found for the plaintiff in the sum of $3291.76. The defendants excepted to the "refusal" of the judge to grant their requests for rulings and "to the final ruling and order" of the judge. The defendants then filed a bill of exceptions and the case was heard by the Supreme Judicial Court of the Commonwealth of Massachusetts (Record, pp. 12-14). In the opinion rendered by the Supreme Judicial Court, which appears in the record submitted herewith, the Supreme Judicial Court sustained the defendants' exceptions, disposed of all the questions involved in the case, and by rescript left nothing for the Superior Court to do but enter judgment for the defendants, which was done on March 17, 1941 (Record, pp. 15-30).

Jurisdiction.

Since this is an instance of a case brought by a trustee in bankruptcy to recover a preference and involves a question

of the application of United States Code, Title 11, section 96 (see Act of May 27, 1926, c. 406, sec. 14, 44 U.S. Sts. at Large, part 2, 666 (U.S.C. Sup. V)), and since the case cannot be properly decided on any independent ground of local law, it is submitted that, final judgment in said case having been entered on March 17, 1941, in the Superior Court, Worcester County, Commonwealth of Massachusetts, in accordance with the rescript of the Supreme Judicial Court (Record, p. 30), the jurisdiction of this Court to review said judgment is properly invoked under United States Code, Title 28, section 344 (b).

Question Presented.

The Supreme Judicial Court of Massachusetts in sustaining the defendants' exceptions to the Superior Court's entry of judgment for the plaintiff on the auditor's reports and in ordering the entry by the Superior Court of judgment for the defendants held—

That under the federal bankruptcy laws where a chattel mortgage is executed in Massachusetts within four months of the bankruptcy of the mortgagor and the recording of such mortgage is required within the meaning of U.S.C. Title 11, section 96 (see Act of May 27, 1926, c. 406, sec. 14, 44 U.S. Sts. at Large, part 2, 666), and the chattel mortgage is not recorded but possession is later taken of the chattels covered by the mortgage, the presence of the elements of a voidable preference is to be determined as of the date of the execution of the unrecorded chattel mortgage rather than as of the date of the taking possession thereunder.

The broad question of voidable preference was raised by the petitioner's declaration (Record, p. 1).

The narrow question of the date as of which the elements of a voidable preference are to be ascertained was raised by

the requests for rulings filed by the respondents (*cf.* particularly Nos. 15, 21, 25, Record, pp. 12-13), and the answer thereto formed the basis of the opinion and rescript of the Supreme Judicial Court (Record, pp. 24-28).

The judgment of the Superior Court should have been affirmed if, under the facts of this case, the proposition outlined above is not sound and in accordance with the established principles of law, and such is the question raised by this petition and presented to this Court for determination.

Reasons Relied on for Allowance of Writ.

Your petitioner respectfully shows to the Court that this is a case of great importance to your petitioner and others.

If the opinion of the Supreme Judicial Court of the Commonwealth of Massachusetts is allowed to stand, cutting off as it does the power of the trustee in bankruptcy to protect the creditors by striking down unrecorded chattel mortgages in cases like the present, then the inevitable result will be non-compliance with the Massachusetts recording laws to the damage of subsequent creditors in the case of the ensuing bankruptcy of the debtor.

Had the creditor in the instant case recorded his chattel mortgage at the time he took possession, then the elements of a preference would have been determined as of this date and the trustee would have recovered. Hence, the obvious way to defeat the trustee is to keep the instrument off the record and then suddenly seize possession of the goods shortly before bankruptcy. That such dealings open wide the door for far-reaching fraud is patent.

Creditors will lend money, if at all, on the basis of property in the possession of the debtor and the lack of any chattel mortgage upon the record, only to have an unknown creditor spring up just prior to bankruptcy, armed with a

hidden chattel mortgage, and seize the very property which formed the basis for the creditors' lending money to the now bankrupt debtor. By the decision of the Supreme Judicial Court no remedy is left to the trustee in bankruptcy, who, if the mortgagee had complied with the recording statute just prior to bankruptcy, would have had a perfect remedy against the mortgagee. The opinion strikes, then, at the vitals of the debtor-creditor relationship.

This case is the first to be presented to this Court for determination in which the issue is raised of the date as of which the elements of a voidable preference are to be determined when possession is taken under an unrecorded chattel mortgage and in which both the execution of the chattel mortgage and the taking possession thereunder occurred within four months prior to bankruptcy.

Conclusion.

Wherefore your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the Superior Court of Worcester County, Commonwealth of Massachusetts, to the end that the judgment entered in said case may be reviewed and reversed by this Honorable Court.

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of Worcester Motor Company, Inc., *Petitioner*,
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